

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

VIKING INSURANCE COMPANY
OF WISCONSIN,

Plaintiff

v.

WAYMAN BRYANT,
6547 Castle Heights
Joplin, Missouri 64804

Defendant.

CASE NO: 3:13-cv-5072

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

COMES NOW Defendant and moves this Honorable Court for its Order dismissing the Complaint of Plaintiff upon the grounds of lack of subject matter jurisdiction, upon the grounds that:

- a. Plaintiff's insured, Dalton Anderson, is a resident of the State of Missouri.
- b. Defendant is a resident of the State of Missouri.
- c. The claims as set forth in the Complaint allege only claims cognizable under the laws of the State of Missouri and do not contain any federal question.
- d. The only jurisdiction of the Court to hear the claims set out in the Complaint, is on the basis of diversity of citizenship, 28 U.S.C. §1332.
- e. As set forth in the Motion to Dismiss for Failure to Sue in Name of Real Party in Interest, and as further demonstrated by the Complaint itself, Plaintiff Viking Insurance Company of Wisconsin is not the real party in interest.
- f. In the event the Court elects to substitute the insured Dalton Anderson in the place and stead of Viking Insurance Company of Wisconsin, or should the Court Order Plaintiff to join the insured Dalton Anderson as a Party Plaintiff, then there shall be both a Plaintiff and a Defendant who are residents of the State of Missouri and diversity shall be destroyed.

- g. In any of these events, Defendant moves that the Complaint be dismissed for lack of subject matter jurisdiction.

WHEREFORE, Defendant moves this Honorable Court for its Order dismissing the Complaint, and for such other and further relief as to this Court deems fit and proper in the premises.

Respectfully submitted,

JOHNSON, VORHEES & MARTUCCI

/s/ ROGER JOHNSON

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that I have served a copy of the foregoing document on all parties in this matter by filing electronically with the Court which will send notification of such filing to the attorneys of record listed below on the 28th day of June, 2013.

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/s/ ROGER JOHNSON

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